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ABSTRACT

Before 1870, copyright registration and deposit were functions of several government departments. After the first Federal copyright law was passed in 1790, copyright registration was performed by the clerk in the U.S. district court for the district where the applicant resided, and single copies of copyright deposits were sent to different offices. The 1870 copyright law, a major concern of Ainsworth Spofford, Librarian of Congress, provided that two depository copies should be sent to the Librarian of Congress, who was to perform all duties required by the copyright law, and that all copyright records and deposits of the district courts and the Patent Office should be transferred to the Library of Congress. By establishing a central registration system for copyright and ensuring a constant flow of copyright deposits, the law permanently altered the nature of the copyright business of the Government and the nature of the Library of Congress. This brief pamphlet, prepared for an exhibit at the Library of Congress, discusses Spofford's role in the 1870 copyright law. (Author/SJ)

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A Century of Copyright in the Library of Congress

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A. R. Spofford

AINSWORTH SPOFFORD AND THE COPYRIGHT LAW OF 1870

By John Y. Cole

Permit me to bring to your attention some leading reasons why the transfer of the entire copyright business to the Library of Congress would promote the public interest.

Ainsworth Rand Spofford, Librarian of Congress, followed these opening words in his letter of April 9, 1870, to Congressman Thomas A. Jenckes, with eight pages of tightly reasoned arguments in favor of centralizing all U.S. copyright registration and deposit activities at the Library of Congress. Five days later, on the floor of the House of Representatives, Jenckes skillfully condensed the arguments in Spofford's 1,600-word "base, outline" into a short, effective speech advocating the transfer of all copyright business to the Library. Jenckes' speech was in support of H.R. 1714, a bill he was sponsoring as chairman of the Committee on Patents to revise and consolidate the patent laws, to which he had added, in sections 85–111, the legislation necessary for the transfer of the copyright business. H.R. 1714 passed the House of Representatives on April 24, 1870, and the Senate on June 24, and when it was signed into law by President Ulysses S. Grant on July 8, 1870, the Library of Congress became the first central agency for the registration and custody of copyright deposits in the United States.

Before 1870, copyright registration and deposit were functions of several government departments. After the first Federal copyright law was passed in 1790, copyright registration was performed by the clerk in the U.S. district court for the district where the applicant resided, and single copies of copyright deposits were sent to different offices: the Office of the Secretary of State received deposit copies from 1790 to 1859, the Smithsonian Institution and the Library of Congress from 1846 to 1859, the Patent Office in the Department of Interior from 1859 to 1870, and the Library of Congress again from 1865 to 1870. The 1870 law provided that two deposittory copies should be sent to the Librarian of Congress, who was "to perform all acts and duties required by the law touching copyrights," and that all copyright records and deposits of the district courts and the Patent Office should be transferred to the Library. By establishing a central registration system for copyright and ensuring a constant flow of copyright deposits to the Library of Congress, the law permanently altered the nature of the copyright business of the Government and the nature of the Library.

Ainsworth Rand Spofford was motivated in his efforts to centralize the copyright business of the United States at the Library of Congress by his determination to make the Library a truly national institution and by his belief in the importance of a strong and efficient copyright system. His views on copyright had been developed in Cincinnati, where he pursued a career as bookseller, publisher, and journalist from 1845 until 1864, when he came to the Library.

In 1849 Spofford was the principal organizer of the Literary Club of Cincinnati, which included in its early membership Rutherford B. Hayes, Salmon P. Chase, Stanley Matthews,

Manning Force, and Alphonso Taft. Among the lively Saturday night debates that took place at the Literary Club was one in 1849, before the club was a year old, on the topic: "Ought an international copyright law be adopted?" The vote after the debate was in the affirmative. On July 23, 1853, the topic came up again when the earnest and articulate 28-year old "founder" of the club, Ainsworth Rand Spofford, read an essay on the subject of copyright.

Spofford was also acquainted with copyright as a Cincinnati bookseller and publisher. Although the law between 1846 and 1859 required that copyrighted works be deposited with the clerk of the U.S. district court and that additional copies be forwarded to the Smithsonian Institution and the Library of Congress, there were no provisions for forcing publishers to send the additional copies to Washington. Relatively few volumes were sent to the Smithsonian or the Library of Congress. But in 1856, when the firm of Truman and Spofford of Cincinnati published and copyrighted *The Corner Cupboard* by Mrs. Sarah Jewett, a copy was deposited in the Smithsonian Institution, for it was later transferred to the Library of Congress as a part of the Smithsonian deposit of 1866.

In 1859 Ainsworth Spofford became the associate editor of the influential *Cincinnati Daily Commercial*. One of his first editorials, on February 1, 1859, was on the importance of copyright to the author:

> We presume the justice of compensation to authors, or the security of literary property, will not be denied except by the most radical school of communism. Assuming that all useful labor is worthy of a recompense, the principle of copyright follows as naturally as the maxim "A fair day's wages for a fair day's work."

Ten days later, his mind again on the subject, Spofford wrote a short description of the copyright activities of the clerk of the U.S. district court located in Cincinnati. After explaining the registration function, he described the deposits received since the first of the year: "Twenty-six copyrights have been secured, of which one was for a rough label, one for a lithograph, three for maps, six for bookkeeping and interest tables, and fifteen for books."

Spofford came to Washington in January 1861 as a correspondent for the *Commercial*. For eight months he forwarded lengthy letters and telegraphic dispatches back to Cincinnati, describing among other events President Lincoln's inauguration and the Battle of Bull Run. In September, unsure of his future with the *Commercial*, he accepted the job of Assistant Librarian of Congress and moved his family to Washington. From the day he started work, Assistant Librarian Spofford considered the three-room Library, then in the Capitol Building, the national library. His first official letter was therefore probably a poignant reminder of the potential role of copyright deposits in developing a national library. To a gentleman in St. Paul, Minnesota, he wrote:

> In reply to your favor ... relating to your Map of Dakota, I would state that the Law requiring a copy of each publication owned to be deposited in this Library was repealed Feby. 3, 1859 and all Books & Maps sent by mail to the Library of Congress are now deposited in the Department of the Interior.

In later years Spofford frequently expressed his distress that the previous Library of Congress administration had consented to the 1859 repeal of the copyright deposit requirements of the act of 1846. In addition to changing the deposit requirements, the law of 1859 transferred to the Patent Office, then in the Department of Interior, all copyright records and deposits formerly in the Office of the Secretary of State.

Ainsworth Spofford was appointed Librarian of Congress on December 31, 1864, and within two months he convinced the Joint Committee on the Library "of the great value that would result to the resources of the Library from a re-enactment of the copyright privilege of deposit." No opposition developed to Spofford's original proposal that a copy be sent to the Library in place of the copy then deposited in the Patent Office; it was agreed that an additional copy would be deposited in the Library. The copyright law of March 3, 1865, which extended copyright protection to photographs and photographic negatives for the first time, provided that "a single copy of every book, pamphlet, map, chart, musical composition, print, engraving or photograph, for

which copyright shall be secured . . . shall be transmitted free of postage . . . within one month of publication to the Library of Congress at Washington for the use of said Library."

Therefore, after a six-year lapse, copyright deposits started to arrive at the Library of Congress. But again there were no enforcement provisions in the law, and many publishers did not deposit their publications in the Library as required. Librarian Spofford made periodic trips to the district courts in New York, Philadelphia, and Boston to obtain information from the copyright records so that he could demand deposit copies for the Library, as provided in the law. He also corresponded with over 30 district court clerks throughout the country, asking them to forward transcripts of their copyright records from which he could claim deposits not received at the Library. Finally, on January 26, 1867, tired of performing what he considered unnecessary labor to claim what legally belonged to the Library, Spofford asked the Joint Committee on the Library to support a $25 penalty for publishers who failed to deposit copies. On January 28, 1867, the proposal was introduced in the Senate and passed, and on February 18, 1867, it became law.

In spite of the amendment, Spofford remained unhappy with the provisions of the copyright law; in his 1868 annual report he complained that "even with the utmost diligence it is found impracticable to secure for the Library all the copyright publications that are issued." Early in 1870 he presented his ideas for the centralization of copyright activities at the Library of Congress to Congressman Jenckes, whose Committee on Patents was about to report out a bill for the revision and consolidation of the patent laws.

Spofford was also able to gain support for his plan from Samuel S. Fisher, who had been appointed Commissioner of Patents on April 26, 1869. Fisher was a patent lawyer from Cincinnati and an old acquaintance of Spofford's; he had also been a member of the Literary Club, though not until after Spofford left Cincinnati for Washington. Moreover, Fisher and Jenckes had corresponded on the subject of patent law reform before Fisher was appointed Commissioner of Patents. As the Patent Office was the custodian of the copyright deposits, Fisher's support of the transfer of copyright responsibility to the Library of Congress was important, and Jenckes took special note of it in his speech in the House of Representatives on April 14, 1870.

Finally, to aid his cause, Spofford sent to leading publishers and literary magazines a circular promoting the copyright transfer; it was reprinted with favorable comment.

Spofford's major reasons why the copyright business of the United States should be centralized in the Library of Congress, as stated in his letter of April 9, 1870, to Congressman Jenckes, were as follows:

> 1. Under the present system, although this National Library is entitled by law to a copy of every work for which a copyright is taken out, it does not receive, in point of fact, more than four-fifths of such publications.
>
> 2. The transfer of the Copyright business proposed would concentrate and simplify the business, and this is a cardinal point . . . Let the whole business . . . be placed in the charge of one single responsible officer, and an infinitude of expense, trouble, and inaccuracy would be saved to the proprietors of Copyrights and to the legal profession.
>
> 3. The advantage of securing to our only National Library a complete collection of all American copyright entries can scarcely be over-estimated . . . We should have one comprehensive Library in the country, and that belonging to the nation, whose aim it should be to preserve the books which other libraries have not the room nor the means to procure.
>
> 4. Having all American publications thoroughly catalogued . . . in an annual volume, carefully edited and authoritatively issued from the press of the Government . . . would be an invaluable aid to thousands.
>
> 5. The proposed reform of the present unsatisfactory methods of recording and perfecting copyright would take away all the objections now so freely brought against the law.
>
> 6. The proposed change would be a great economy for the Government. It would save the Patent Office the trouble, expense, and room of providing for a great library of material which it cannot use and does not want . . . A copyright is not an invention or a patent—it is a contribution to literature.

7. By requiring the Librarian to make an annual report to Congress, a highly important and interesting class of facts would be added to our national statistics.

The copyright law of July 8, 1870, was primarily a result of Spofford's behind-the-scenes advocacy, Representative Jenckes' skillful legislative leadership, and Commissioner of Patents Fisher's support and "hearty cooperation." On Saturday, July 9, 1870, the day after the law was signed, the eager Mr. Spofford sent letters to 18 district court clerks throughout the country, requesting that they forward their copyright records to the Library of Congress "as early as convenience will permit."

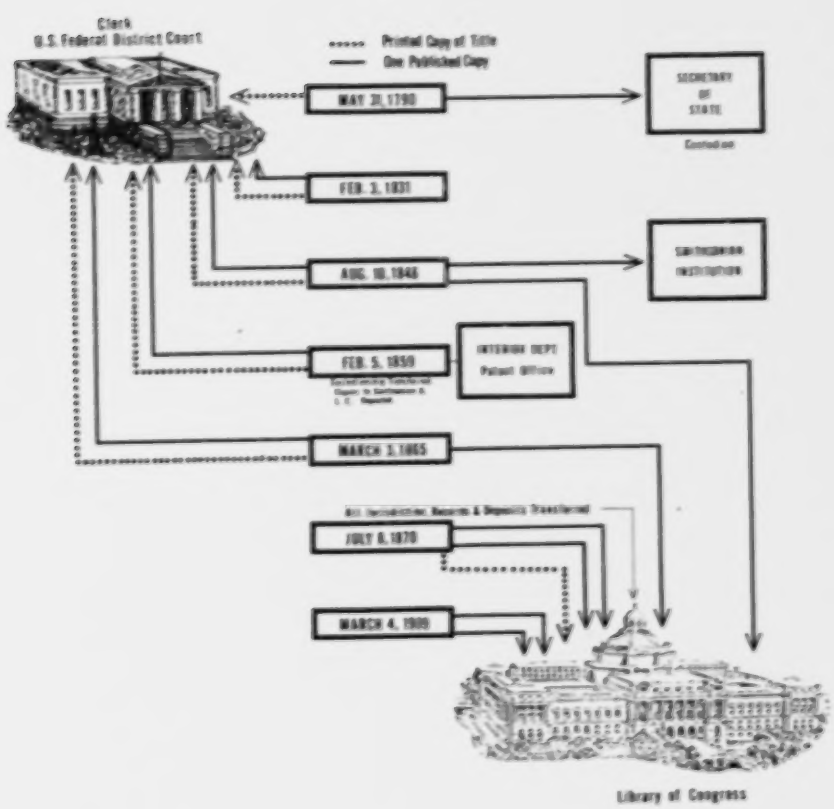
In 1891, speaking at a meeting called to celebrate the beginning of the second century of the American patent system, Ainsworth Spofford used precisely the same reasons to justify the centralization of copyright at the Library of Congress that he had used 21 years earlier in his letter to Congressman Jenckes. He also repeated a long-standing belief when he explained to a hypothetical author why the Government had the right to require authors to deposit two copies of every copyrighted work in the Library of Congress: "The nation gives you exclusive right to make and sell your publication, without limit of quantity, for forty-two years; give the nation, in return, two copies in perpetual evidence of your right."

John Y. Cole is Technical Officer of the Reference Department, Library of Congress.

Historical Evolution of the Deposit Requirements

United States Copyright Laws

1790 - 1909



THE EXHIBIT

The first part of the exhibit traces the development of the copyright law from the constitutional provision to the pending general revision bill, S. 543, with emphasis on Ainsworth Rand Spofford, Thorvald Solberg, Mark Twain, and Theodore Roosevelt, who were mainly responsible for that development before 1909. A special section concerns the efforts since 1955 to revise the outmoded current law, Title 17, U.S. Code. Another section covers the Universal Copyright Convention, the Stockholm Conference of the Berne Convention, and the Rome Convention, commonly known as the "Neighboring Rights Convention."

Some copyright deposits which have played an important part in the economic or cultural life of their creators and at the same time have produced an impact on the everyday life of the general public are also shown in the exhibit and listed below. They reflect the importance of copyright to authors, musicians, and artists, and to the great industries which are based on their copyrighted works.

BOOKS

The Raven and Other Poems, by Edgar Allan Poe, 1845
Uncle Tom's Cabin, by Harriet Beecher Stowe, 1851
The House of Seven Gables, by Nathaniel Hawthorne, 1851
The Courtship of Miles Standish, by Henry W. Longfellow, 1858
The Centennial Meditation of Columbia, by Sidney Lanier, 1876
Main Street, by Sinclair Lewis, 1920
A Farewell to Arms, by Ernest Hemingway, 1929
Sartoris, by William Faulkner, 1929
The Good Earth, by Pearl Buck, 1931
The Grapes of Wrath, by John Steinbeck, 1939

LECTURE

I Have A Dream, by Dr. Martin Luther King, 1963

DRAMA

The Iceman Cometh, by Eugene O'Neill, 1940

MUSIC

Beautiful Dreamer, by Stephen Foster, 1864
Maple Leaf Rag, by Scott Joplin, 1899
You're a Grand Old Flag, by George M. Cohan, 1906
Alexander's Ragtime Band, by Irving Berlin, 1911
Stardust, by Hoagy Carmichael, 1928
Variations I, by John Cage, 1969

MAPS AND GLOBES

Bradley's Map of the United States: 1796
The Telegraphic Globe With Telegraphic Lines Drawn by S. F. B. Morse, 1872
Globe of the Moon (Hammond Co.), 1969

ARTISTIC WORKS

Six Currier & Ives lithographs:
- American Hunting Scene, 1863
- Home to Thanksgiving, 1867
- American Railroad Scenes, 1874
- American Steamboats on the Hudson, 1874
- The Celebrated Four-in-Hand Stallion Team, 1877
- A Disputed Heat, 1878

The Yellow Dugan Kid (comic drawing), by Richard F. Outcault, 1896
The Great Wallace Shows (circus poster): The Stirk Family, 1898

PHOTOGRAPH

Oscar Wilde, by Napoleon Sarony, 1882

Some recent trends of interest are shown in the photographs of the Ruby Lips jeweled pin and the Leaf Veined Hand jeweled clip deposited by Salvador Dali, and the actual first computer program deposited, in 1961, SCOPAC-PROG. 63, by North American Aviation.

In addition, Fred Ott's Sneeze, by Thomas A. Edison, considered to be the first motion picture deposited (1894), can be viewed with other early motion pictures in a special viewing machine. A large display of posters documents the growth of the motion picture industry.

The recording industry, which is based on copyrighted music, is represented by an early Edison cylinder player, an early Zonophone record player, and a wide variety of modern record album jackets. Through a special re-recording, a turn of the century Sousa band concert and a song by Geraldine Farrar can be heard.

The exhibit ends with a display honoring the six American winners of the Nobel Prize for Literature: Sinclair Lewis, Eugene O'Neill, Pearl Buck, William Faulkner, Ernest Hemingway, and John Steinbeck. Quotations from their acceptance speeches and selected copyrighted works are shown.

NOTABLE DATES IN AMERICAN COPYRIGHT

May 31, 1790. First U.S. copyright law. Term of 14 years with privilege of renewal for 14 years. Books, maps, and charts protected.

June 9, 1790. First copyright entry: The Philadelphia Spelling Book.

April 29, 1802. Prints added to protected works.

February 3, 1831. First general revision of the copyright law. Music added to protected works. Term of copyright extended to 28 years with privilege of renewal for 14 years.

August 18, 1856. Dramatic compositions added to protected works.

March 3, 1865. Photographs added to protected works.

July 8, 1870. Second general revision of the copyright law. Copyright activities centralized in the Library of Congress. Works of art added to protected works. Translations and dramatizations mentioned. Indexing of the record of registrations begun.

March 3, 1891. First U.S. copyright law authorizing establishment of copyright relations with foreign countries. Periodicals mentioned. Records of works registered issued in published form for the first time in July 1891.

January 6, 1897. Performance of music protected.

February 19, 1897. Separate Copyright Office established as a department of the Library of Congress. Position of Register of Copyrights created.

March 4, 1909. Third general revision of the copyright law, the basis of the present law. Admission of certain classes of unpublished works to copyright registration. Date of copyright changed to date of publication for published works. Renewal term extended to 28 years.

August 24, 1912. Motion pictures, previously registered as photographs, added to protected works.

July 13, 1914. President proclaims U.S. adherence to Buenos Aires Copyright Convention of 1910, establishing convention protection between the United States and certain Latin American nations.

July 31, 1939. Transfer of commercial prints and labels from the Patent Office to the Copyright Office.

July 30, 1947. Copyright law codified into positive law as Title 17 of the U.S. Code.

July 17, 1952. Performance rights extended to non-dramatic literary works.

August 5, 1955. Universal Copyright Convention proclaimed by the President as being effective in the U.S. as of September 16, 1955.

September 16, 1955. Effective date of Universal Copyright Convention and related changes in Title 17.

September 19, 1962. First of five special acts extending terms of subsisting renewal copyrights pending congressional action on general copyright law revision.

July 20, 1964. First general revision bill introduced; no action taken.

April 11, 1967. General revision bill, as amended, passed by House of Representatives but not by Senate.

December 10, 1969. Subcommittee on Patents, Trademarks, and Copyrights of the Senate Judiciary Committee approved S. 543, the Senate version of the general revision bill.

FORMER REGISTERS OF COPYRIGHTS

Thorvald Solberg	1897–1930
William L. Brown	1930–1936
Clement L. Bouvé	1936–1943
Richard C. De Wolf	1944–1945
Sam Bass Warner	1945–1951
Arthur Fisher	1951–1960

PRESENT REGISTER OF COPYRIGHTS

Abraham L. Kaminstein	1960–

PRESENT LIBRARIAN OF CONGRESS

L. Quincy Mumford	1954–